

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ANTHONY RUTLEDGE,)	
)	
Petitioner,)	
)	
vs.)	No. 1:16-cv-00271-LJM-DKL
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

Petitioner Anthony Rutledge (“Petitioner”) has moved for relief from the judgment in Petitioner’s criminal matter, 1:09-cr-00049-LJM-MJD-1, pursuant to 28 U.S.C. § 2255, *Johnson v. United States*, 135 S. Ct. 2551 (2015) and *Welch v. United States*, 136 S. Ct. 1257 (2016); and the Seventh Circuit Court of Appeals’ authorization for Petitioner to file a second or successive motion pursuant to 28 U.S.C. § 2255(h). *See United States v. Rutledge*, 1:09-cr-00049-LJM-MJD-1, Dkt. No. 117.

On July 19, 2010, Petitioner was sentenced by the United States District Court for the Southern District of Indiana to 285 months imprisonment to be followed by a five-year term of supervised release, by Judgment and Conviction dated July 22, 2010, on a charge of possession of firearms under 18 U.S.C. § 922(g)(1). Petitioner received an enhanced sentence under the so-called residual clause of the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e), which imposes a more severe sentence on those who have three or more previous convictions for a “violent felony.” The three predicate felonies giving rise to Petitioner’s status under the ACCA were a burglary conviction incurred in Marion County, Indiana, on May 23, 2001; an attempted residential entry conviction incurred in

Vigo County, Indiana, on March 15, 2004; and a conviction for Dealing in Cocaine incurred in Marion County, Indiana, on April 19, 2005.

On June 26, 2015, the United States Supreme Court held the residual clause of the ACCA unconstitutional. *Johnson*, 135 S. Ct. at 2584. Subsequently, the Supreme Court held that *Johnson* announced a new substantive rule of constitutional law that the Supreme Court had categorically made retroactive. *Welch*, 136 S. Ct. at 1265. On November 24, 2015, the Seventh Circuit notified the Court that it had given Petitioner permission to proceed with a second and/or successive motion under 28 U.S.C. § 2255. CM/ECF Dkt. No. 2. Petitioner filed the instant suit on February 1, 2016, alleging that he was entitled to relief under *Johnson* because his prior conviction for Residential Entry does not qualify as a violent felony under the residual clause of the ACCA. CM/ECF Dkt. No. 1. On March 1, 2016, the Court stayed this matter until the Supreme Court issued its ruling in *Welch*. Dkt. No. 7.

The parties have now stipulated that “a sufficient number of prior convictions which would count for ACCA status do not exist under *Johnson* and *Welch*.” Dkt. No. 11. They further agree that, based upon the underlying facts of these cases, the sentence imposed in this case was illegal in that it exceeded the otherwise applicable statutory maximum penalty of ten years incarceration and three years of supervised release, under 18 U.S.C. § 922(g)(1). They also stipulated that Petitioner has served 95 months toward his sentence and that a sentence of 110 months in prison and a three-year term of supervised release is sufficient, but not greater than necessary in his criminal matter. Dkt. No. 11.

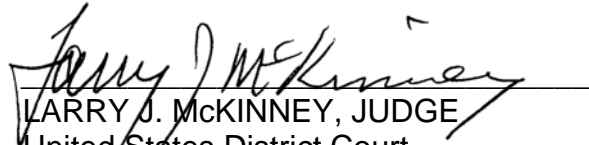
For the reasons stated herein, the Court concludes that Petitioner’s previous sentence was unconstitutional and that a reduction is necessary pursuant to *Johnson* and

Welch. The Court hereby **GRANTS** Petitioner's Motion pursuant to 28 U.S.C. § 2255. A Judgment and Commitment in the associated criminal matter shall be forthcoming. Judgment consistent with this Order shall issue in this matter.

This Order shall also be entered on the docket in the underlying criminal action, *United States v. Rutledge*, 1:09-cr-00049-LJM-MJD-1.

IT IS SO ORDERED.

DATED: 6/14/2016


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distribution:

Sara J. Varner
INDIANA FEDERAL COMMUNITY DEFENDERS
sara.varner@fd.org

James Robert Wood
UNITED STATES ATTORNEY'S OFFICE
bob.wood@usdoj.gov